



by Plaintiff is attached hereto as Exhibit 1.<sup>1</sup>

2.

Fifth Judicial District Court of New Mexico is within the District of New Mexico.

3.

Defendant Schlumberger was served with the Complaint on March 31, 2014.<sup>2</sup> (See Service of Process Transmittal, Ex. 3.) Defendant Leonel Lujan has not been served.

4.

In his Complaint, the Plaintiff alleges four causes of action: retaliatory discharge in violation of both the New Mexico Wage and Hour Act (“NMWHA”) and the Fair Labor Standards Act (“FLSA”); prima facie tort; and breach of an implied contract. (*See* Ex. 1.)

#### **BASIS FOR REMOVAL**

5.

This action is removed pursuant to 28 U.S.C. § 1441 and 28 U.S.C. §1331 on the grounds that Plaintiff’s Complaint raises a federal question under the FLSA (29 U.S.C.A. § 200, *et seq.*) and that supplemental jurisdiction over related state law claims (if any) is proper under 28 U.S.C. § 1367. Specifically,

- a. Plaintiff’s Complaint alleges that Defendants’ actions constitute “an unlawful employment practice and violate the anti-retaliation provisions of . . . the Fair Labor Standards Act (29 U.S.C.A. § 215)” and as a consequence he suffered damages.
- b. Section 215 of the FLSA establishes that it will be a “prohibited act” for an

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<sup>1</sup> Plaintiff’s Original Complaint was filed on February 19, 2014, but was not served upon any of the Defendants. The Original Complaint is attached hereto as Exhibit 2.

<sup>2</sup> There is confusion in the record as to which Defendant was served. The Summons that was served named Schlumberger as the defendant. The affidavit filed in the state court record, however, indicates service on M-I.

employer “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.”

- c. While Defendants strongly dispute Plaintiff allegations, he is the master of his complaint and has alleged, on the face of his complaint, that he is bringing his claim pursuant to Section 215 of the FLSA and that he should be able to recover damages under the Code Section. As such, his Complaint raises a federal question and removal is proper.
- d. Plaintiff also alleges that Defendants’ actions “breached the public policy in New Mexico and the United States.”

6.

Moreover, because this Court has original jurisdiction of Plaintiff’s federal claims under the FLSA, this Court may accept the state law causes of action under this Court’s supplemental jurisdiction. 28 U.S.C. §§ 1367 and 1441(c). The alleged state claims share with the federal claim “a common nucleus of operative fact” as they arise from the alleged discrimination and employment of Plaintiff. They are therefore removable as supplemental claims. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-27 (1966).

**REMOVAL TIMELY**

7.

This Notice of Removal is being filed within the time allowed by 28 U.S.C. § 1446(b) because it is filed within 30 days after the receipt by Defendant of papers that provided the basis for removal of this action. (*See* Ex. 2.)

**REMOVAL PROPERLY FILED**

8.

Pursuant to 28 U.S.C. § 1446, this Notice of Removal complies with the requirement of 28 U.S.C. § 1446(a), concerning a short and plain statement for the grounds of removal, and with 28 U.S.C. § 1447(b), concerning the filing of all documents from the state court action. (*See* Ex. 1.) Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Filing of Removal will be filed in the Fifth Judicial District Court of New Mexico and served upon Plaintiff. A copy of the Notice to State Court of Removal of Civil Action is attached hereto as Ex. 4.

9.

Defendants Schlumberger and M-I have contacted and consulted with Defendant Leonel Lujan. All Defendants consent to removal of this matter to the United States District Court for the District of New Mexico. Defendant Lujan consents to removal but notes that such consent does not constitute an appearance for the purposes of Rule 12.

WHEREFORE, Defendants gives notice that the action now pending in the Fifth Judicial District Court of New Mexico (County of Eddy), is hereby removed to the United States District Court for the District of New Mexico.

Respectfully submitted,

Rodey, Dickason, Sloan, Akin & Robb, P.A.

By: Electronically Filed /s/ Jeffrey L. Lowry  
Jeffrey L. Lowry

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(505) 768-7395

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*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on April 28<sup>th</sup>, 2014, I served a copy of the foregoing via U.S. Mail, to the following:

Lane T. Martin  
Martin, Dugan & Martin  
509 W. Pierce Street  
P.O. Box 2168  
Carlsbad, NM 88221-2168

By: /s/ Jeffrey L. Lowry  
Jeffrey L. Lowry

**VERIFICATION OF JEFFERY L. LOWRY**

I, Jeffery L. Lowry, verify as follows:

I am an active member in good standing of the State Bar of New Mexico and a partner with the law firm of Rodey, Dickason, Sloan, Akin & Robb, P.A., counsel of record for Defendants. I have firsthand knowledge of the matters set forth herein. I submit this verification pursuant to Local Rule Civ. 11.1 and pursuant to Federal Rule of Civil Procedure 11.

Attached as Exhibits 1, 2 and 3 are true and complete copies of all pleadings and other documents filed in the state court civil action originally commenced in the Fifth Judicial District Court of New Mexico (County of Eddy), Case Number CV-2014-159.

Respectfully submitted,

Rodey, Dickason, Sloan, Akin & Robb, P.A.

By: /s/ Jeffrey L. Lowry

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